



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 220204-0040]

RIN 0648-BH70

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Electronic Monitoring Program Regulations for Bottom Trawl and Non-Whiting Midwater Trawl Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement electronic monitoring (EM) program regulations for vessels using groundfish bottom trawl and non-whiting midwater trawl gear in the Pacific Coast Groundfish Trawl Catch Share Program. The proposed action would allow vessels using bottom trawl and non-whiting midwater trawl gear to use EM in place of human observers to meet requirements for 100 percent at-sea catch monitoring. The proposed action is intended to increase operational flexibility and reduce monitoring costs for vessels in the groundfish trawl fishery. The proposed rule would also revise some existing regulations for EM vessels and EM service providers to clarify and streamline EM program requirements.

DATES: Comments on this proposed rule must be received no later than *[INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0127 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-

Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2021-0127 in the Search box, click the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS and to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review - Open for Public Comments” or by using the search function.

Electronic Access

This proposed rule is accessible at the Office of the Federal Register website at <https://www.federalregister.gov>. Background information and documents are available at the NMFS West Coast Region website at: <https://www.fisheries.noaa.gov/species/west-coast-groundfish> and at the Pacific Fishery Management Council's website at https://www.pcouncil.org/managed_fishery/electronic-monitoring/.

FOR FURTHER INFORMATION CONTACT: Colin Sayre, phone: 206-526-4656, or e-mail: colin.sayre@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Pacific Coast Groundfish Fishery Management Plan (FMP) specifies management measures for over 90 different groundfish species in Federal waters off the West Coast states. Target species in the commercial fishery include Pacific whiting (hake), sablefish, dover sole, and rockfish, which are harvested by vessels primarily using midwater trawl and bottom trawl gear, and to a lesser extent “fixed gear” fish pots and longline. The trawl fishery is managed under the West Coast Groundfish Trawl Catch Share Program (Catch Share Program), which was implemented through Amendment 20 to the FMP in January 2011. The Catch Share Program consists of an individual fishing quota (IFQ) program for the shorebased trawl fishery (including whiting and non-whiting sectors), and cooperatives for the at-sea mothership (MS) and catcher/processor (C/P) trawl fisheries (whiting only). The Catch Share Program requires 100 percent monitoring of vessels at-sea, and dockside when offloading, to ensure accountability for all landings and discards of allocated IFQ species. The West Coast Groundfish Observer Program (WCGOP) is responsible for the training, briefing, and in-season support of at-sea observers in the Catch Share Program. WCGOP helps to manage and review the catch data collected by observers while at-sea.

Vessel owners and first receivers are responsible for obtaining and funding catch share observers and catch monitors as a condition of participating in the Catch Share Program. To provide a potential cost-saving alternative to human observers, the Pacific Fishery Management Council, NMFS, and groundfish stakeholders have been developing an electronic monitoring (EM) program as an option to meet at-sea monitoring requirements of the Catch Share Program. EM uses cameras and associated sensors to record and monitor fishing activities while a vessel is operating at sea. Video data is later reviewed by an analyst onshore to collect catch and effort information. EM can reduce monitoring costs for some vessels because it does not require deploying a human observer to the vessel, and associated, labor, travel, and logistical expenses.

On September 6, 2016, NMFS published the proposed rule providing a regulatory framework for EM in the Pacific Coast groundfish fisheries, and specific regulations for EM use with whiting midwater trawl gear and fixed gear (81 FR 61161). As discussed in that proposed rule, the Council originally contemplated including regulations for all gear types used in the Catch Share Program (whiting, non-whiting midwater, bottom trawl, and fixed gear) in one regulatory amendment. However, at the time, additional information was needed to finalize protocols for the use of EM on trips using bottom-trawl and non-whiting midwater gear. In April, September, and November 2017, the Council discussed various aspects of the EM program and took final action to recommend the use of EM with bottom trawl and non-whiting midwater trawl gear.

On June 28, 2019, NMFS published the final rule to allow the use of EM on whiting and fixed gear trips (84 FR 31146). The final rule established the overall EM program requirements, including an application process and responsibilities for participating vessel owners and operators and EM service providers, requirements for first receivers receiving catch from EM trips, and detailed gear-specific protocols for the use of EM on whiting and fixed gear trips. The final rule also set the implementation of third party EM service provider data services to January 1, 2021, to provide additional time to prepare for implementation.

At the April and June 2020 meetings, the Council considered and ultimately recommended other minor regulatory changes to existing EM program regulations implemented under the June 2019 final rule (84 FR 31146; June 28, 2019). These regulatory changes were identified and developed from information collected through exempted fishing permits (EFPs) used to test EM systems and protocols, and are intended to clarify and streamline EM program requirements. These proposed regulatory changes are included under this proposed rule, and are described in the following sections of this preamble.

At its April and June 2020 meetings the Council also recommended a delay in program implementation until January 1, 2022. NMFS approved the recommendation, to strengthen Council and industry support for the EM program, and to increase participation when the program is implemented. NMFS published a subsequent proposed rule (85 FR 53313; August 28, 2020) and final rule (85 FR 74614; November 23, 2020) that delayed implementation of the EM program by one year until January 1, 2022, to provide additional time for industry and prospective service providers to prepare for implementation.

At the June 2021 meeting, the Council again discussed delaying implementation of all EM program regulations, and took action at the September 2021 meeting to recommend that NMFS delay implementation of the entire EM program until January 1, 2024. NMFS published an interim final rule on October 6, 2021 (86 FR 55525) that changed effective dates in regulations in order to delay all other EM program regulations until at least January 1, 2024, and only after NMFS issues a public notice at least 90 calendar days before it will begin accepting applications for EM Authorizations for the first year of the Program. The Council and the industry have expressed the need to further develop a mechanism for the industry to fund video review and storage by Pacific States Marine Fishery Commission (PSMFC). The Council and members of the fishing industry would like PSMFC to continue participating as a NMFS-certified, sole-source service provider under the EM regulatory program. They assert that PSMFC can provide video review services at lower cost than private sector service provider companies. Consistent with the existing regulations implemented under the October 6, 2021 interim final rule (86 FR 55525), these proposed regulations would similarly not be implemented before January 1, 2024.

Despite the delay in implementation of the EM program, NMFS is proceeding with this proposed rule that would allow the use of EM on trips with bottom-trawl and

non-whiting midwater trawl gear. Should the Council take action to change EM service provider regulations to allow PSMFC to function as a sole-source EM service provider, NMFS would need to initiate a separate proposed and final rulemaking to make necessary changes to the existing regulations for EM service providers that were finalized under the June 2019 final rule (84 FR 31146; June 28, 2019). Whether the Council chooses to take action to change EM service provider regulations, or not, completing the rulemaking process for the use of EM on bottom-trawl and non-whiting midwater trawl trips will ensure all regulations are in place for vessels to use EM with any legal groundfish gear type in advance of EM program implementation.

In the October 2021 interim final rule, NMFS acknowledged that some permit applications had already been received at the time of the rulemaking. NMFS will consider and review these applications in advance of the date the program is fully implemented. Upon review NMFS will make a determination regarding the status of the applicant and may request updated information.

The Council deemed the proposed regulations necessary and appropriate to implement this action in a January 20, 2022, letter from Council Executive Director, Merrick Burden, to Regional Administrator Barry Thom. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. We are seeking comment on the proposed regulations in this action and whether they are consistent with the Pacific Coast Groundfish FMP, the Magnuson-Stevens Act and its National Standards, and other applicable laws.

II. Proposed Regulations

Proposed Measures for Using EM on Bottom Trawl and Non-Whiting Midwater Trawl Trips

The June 2019 final rule (84 FR 31146; June 28, 2019) implemented the overall framework and general requirements for the EM Program, including an application process for vessel owners and EM service providers and responsibilities for all program participants. This rule proposes to allow vessels participating in the EM Program to use bottom trawl gear or midwater trawl gear targeting non-whiting species, under the same general program requirements already in place for trips targeting whiting or using fixed gear. Vessel owners would be able to apply to NMFS to use EM in place of human observers to meet the 100-percent at-sea monitoring requirements of the Catch Share Program for bottom trawl or non-whiting midwater trawl trips. As is currently required under the EM Program regulations, vessel owners intending to use EM for bottom trawl or non-whiting midwater trawl trips would be required to develop a vessel monitoring plan (VMP) which documents installation of EM systems, including specific plans and procedures for system operation, maintenance, and catch handling. This information would be submitted to NMFS for review as part of the vessel's application for authorization to use EM. The vessel operator would be required to record discards of IFQ species on a logbook, which would initially be used to debit quota pounds from the vessel's account. The EM video data would then be reviewed by the vessel's EM provider and used to validate the discards reported in the logbook. The amount of video reviewed to audit the logbook would be as specified by NMFS in consultation with the Council and based on performance.

A detailed description of EM program requirements is contained in the September 2016 proposed rule (81 FR 61161; September 6, 2016) and June 2019 final rule (84 FR 31146; June 28, 2019) and is not repeated here. This proposed rule revises the gear-specific requirements of the EM Program to add requirements for trips using bottom trawl and non-whiting midwater trawl gear, and are described in the following sections of this preamble.

Catch Retention

Under this proposed rule, two different discard and catch retention rules could be used with EM on bottom trawl, and non-whiting midwater trawl trips: “maximized” or “optimized” retention. Vessel operators would be able choose the preferred retention rule under which they would plan to operate for a fishing trip using EM. As part of the required declaration report, prior to departing on a fishing trip, vessel operators would declare whether they intend to use maximized or optimized retention rules for the trip. Declaration reports are described in additional detail in following sections of this preamble.

Under proposed “maximized” retention requirements, vessels on bottom trawl and non-whiting midwater trawl trips would not sort or discard catch at-sea, and would be required to retain all catch until landing, with exceptions for prohibited and protected species.

Under “optimized” retention, EM vessel operators would be allowed to discard species that can be differentiated on camera, and retain those species that cannot be easily distinguished in video data. Some groundfish species are difficult to distinguish from each other without close inspection of certain physical features which cannot be easily viewed using video data. Species easily differentiated that may be discarded would be listed in § 660.604(p).

Vessel operators using EM on bottom trawl and non-whiting midwater trawl trips would be responsible for ensuring all discarded catch would be discarded following catch handling instructions in the NMFS-accepted VMP. This proposed rule would allow NMFS to specify alternate retention requirements in a NMFS-accepted VMP through the process described at § 660.604(f), after consultation with the Council and issuance of a public notice notifying the public of the changes.

Both retention rules have trade-offs, depending on the target species and gear type used. “Maximized” retention would simplify catch handling at sea, and video review as only prohibited and protected species discards would need to be differentiated on camera. “Optimized” retention would allow vessel operators to discard catch that can be differentiated on camera, and would reduce the burden of having to store and later dispose of unmarketable or otherwise undesirable fish. The Council originally recommended “optimized” retention rules as the preferred alternative for bottom trawl and non-whiting midwater EM trips because the Council considered “maximized” retention too restrictive. However, some EFP vessel operators on non-whiting midwater trawl trips targeting rockfish expressed a preference for “maximized” retention as it simplified catch handling in a manner consistent with vessel operation on midwater whiting trips. The Council determined that allowing vessel operators to choose the retention rules that best fit the operation of gear and vessel, as well as the characteristics of the target species, would provide operational flexibility and ensure the reliability of EM video data for discard accounting.

This proposed rule would also expand the definition of prohibited species for the purposes of retention requirements under EM regulations at § 660.601. California Department of Fish and Wildlife (CDFW) recommended this proposed regulatory change to ensure state-managed species would be treated in the same manner as prohibited species if the vessel operator, or first-receiver, does not have the appropriate state permit to land and sell these particular species of fish. Because the retention/discard species list can change through time, CDFW recommended to the Council regulatory language that would cover any state-managed species to eliminate the need for further revisions should other state-managed species be added or removed from the lists.

EM Declaration and Switching Between EM and Observers

Under the proposed rule, vessels on bottom trawl and non-whiting midwater trawl trips would be allowed to switch between using EM systems on some trips and human observers on others. Current West Coast fisheries regulations at § 660.13(d) require vessel operators to declare the fishery sector in which they will participate, the area to be fished, and the gear and monitoring type (EM or observers) they intend to use prior to leaving port, with limited exemptions. The gear types or sectors, and monitoring types that must be declared are listed in regulations at § 660.13(d)(4)(iv)(A). These declarations are sent to the NMFS Office of Law Enforcement (OLE), and are binding for the duration of the fishing trip for which they have been made. This proposed rule would modify the list of declarations to include EM as a monitoring type that may be selected and declared on trips with bottom trawl and non-whiting midwater trawl gear.

Under current regulations at § 660.604(e)(3)(ii), EM vessel operators are required to submit annual tentative fishing plans to NMFS. Tentative fishing plans are used by WCGOP and observer providers to plan training and deployment of observers. Tentative fishing plans are a description of the vessel owner's fishing plans for the year, including which fishery the vessel owner plans to participate in, from what ports, and when the vessel owner intends to use EM and observers. The information provided in tentative fishing plans is for purposes of planning observer training and deployments, and is not binding.

Under this proposed rule, vessel owners and operators taking bottom trawl and non-whiting midwater trawl trips would not be restricted on the number of times they could switch between EM and observers during the year. Vessel operators are required to communicate their intent to use either monitoring type before fishing through declarations to NMFS OLE. The Council determined that by using tentative fishing plans, disruption to observer training and deployment would be mitigated should vessel operators choose to switch monitoring types, therefore eliminating the need to require

limits on switching monitoring types. The option to switch between EM and observers provides vessel operators flexibility to use the best monitoring strategy when considering efficiency, cost, or other operational factors of their individual fishing and business plans at a given time. There would be no limit on switching between observers and EM for non-whiting midwater trawl and groundfish bottom trawl vessels.

Observer program declaration

Under existing regulations at § 660.604(n), as described above, a vessel operator must declare their intent to use either EM or observers 48 hours prior to leaving port. Under proposed regulations for “maximized” and “optimized” retention, the operator would also be required to include the retention rules they intend to use in their declaration to WCGOP 48 hours prior to leaving port on a trip using EM with bottom trawl or non-whiting midwater trawl gear. This timeframe and declaration allows for the planning of observer deployment. “Optimized” retention EM trips would continue to require partial observer coverage for the purpose of collecting biological samples of discarded catch. Biological samples include age, sex, and length specimen data which cannot be obtained through EM systems. Requiring the vessel operator to notify WCGOP of their intended retention type will ensure optimized retention trips can be selected for biological sampling. WCGOP does not require partial observer coverage on maximized retention EM trips for biological sampling at this time, but could potentially in the future.

Group EM Authorization and Self-Enforcing Agreements

Under the proposed regulations, a group of eligible vessel owners participating in the shorebased IFQ sector, including those that take bottom trawl and non-whiting midwater trawl trips, may obtain a group EM authorization through a self-enforcing agreement. Through a private, contractual arrangement, a self-enforcing agreement allows a co-signed group of vessels, owners, operators, and other interested parties to cooperatively encourage, and enforce, compliance of EM program requirements by

members. To be considered for a group EM authorization, a group of vessel owners must submit a complete initial EM authorization application package to NMFS for review and approval. The package must include a copy of the self-enforcing agreement to be eligible to receive a group EM authorization. Participating vessel owners would be required to agree to conduct fishing operations according to the terms of the self-enforcing agreement. NMFS would still bear the ultimate responsibility for enforcing the EM regulations.

The self-enforcing agreement would need to include a description of participating members, responsibilities, procedures for communication with members and NMFS, equipment performance standards, provisions for the use and protection of confidential data, measures to enforce compliance, procedures for addressing non-compliance of members, and annual reports to the Council.

Under these proposed regulations, NMFS would have the authority to invalidate a group EM authorization if determined that any of the vessels, owners, and/or operators no longer meet the eligibility criteria for the self-enforcing agreement. NMFS would first notify the members of the group EM authorization of the deficiencies in writing, providing instructions, for members to correct the deficiencies. If the deficiencies are not resolved upon review of the first trip following the notification, NMFS will notify the members in writing that the group EM authorization is invalid and that the members are no longer exempt from observer coverage at §§ 660.140(h)(1)(i) and 660.150(j)(1)(i)(B) for that authorization period. After the invalidation of a group EM authorization, individual vessels would be able to apply for individual authorizations.

The Council recommended the allowance of self-enforcing cooperative agreements for shorebased IFQ vessels in the EM program based on prior participation in EM EFPs by fishing cooperatives. Under proposed regulations, a fishing collective that has operated under a cooperative self-enforcing agreement to test EM under EFPs would

be able to apply for authorization to continue self-enforced compliance with the EM program. This proposed rule would allow additional groups of shorebased IFQ vessels applying for EM authorization to enter in the self-enforcing cooperative agreements. These agreements would help to encourage compliance with the many day-to-day responsibilities for EM system maintenance and catch handling requirements of the EM program.

Regulatory Changes to Refine Existing EM Program

In June 2019, NMFS published the final rule to implement an EM program for whiting and fixed gear vessels operating within the trawl fishery (84 FR 31146; June 28, 2019), establishing responsibility requirements for vessel operators using EM systems, and for EM service providers. These responsibilities are detailed in the final rule, and include declaration of EM system use by vessel operators, protocols for transferring and handling EM data, logbook processing requirements, and technical reports by EM service providers. Minor changes necessary to clarify these regulations were identified after the publication of the 2019 final rule. The regulatory changes described below were developed through Council discussion with NMFS and members of industry at the Council's April and June 2020 meetings. The Council's intent in developing these regulatory changes is to refine and clarify certain EM program requirements and improve the effectiveness of the EM program overall in meeting its intended monitoring goals for the Trawl Catch Share Program.

1. Hard Drive Deadline

This proposed regulatory change would increase the hard drive submission deadline to 72 hours from the beginning of the offload following a fishing trip in which EM was used. Under current EM program regulations at § 660.604(s)(3), vessels using EM systems are required to submit hard drives storing EM video data within 24 hours of beginning an offload after a fishing trip. Increasing this deadline to 72 hours would align

it with the hard drive submission requirements used under EM EFPs. This change would provide additional time for vessel operators to comply with hard drive submission requirements with minimal impact to the timeliness of data. This change would also ensure a smooth transition for vessels operating under EFPs to the full EM program regulations when they become effective.

2. Reusing Hard Drives

This proposed regulatory change would require the scrubbing of EM hard drives only if end-to-end encryption is not used. Current EM regulations at § 660.603(m)(3) require service providers to remove all EM data before hard drives can be reused in the field. This requirement was intended to ensure protection of confidential information for vessel owners and operators. However, regular scrubbing of hard drives can shorten their functional life, and require their replacement more frequently, increasing operational costs for EM users. NMFS and the Council determined that the use of end-to-end encryption would sufficiently protect sensitive information and extend the life of EM hard drives. End-to-end encryption protects information encrypted by the sender, allowing only recipients with the encryption key to decrypt and access the information. Third parties without the encryption key would not have the means to read the files. Starting in 2017, NMFS stopped requiring scrubbing of hard drives that use end-to-end encryption in the EM EFP, which is consistent with practices in other regions. This regulatory change would reduce program costs, and still allow vessel owners to work with service providers to develop more strict requirements for the treatment of hard drives.

3. Limit on Switching Between EM and Observers for Whiting Vessels

The Council is recommending removing the limit on switching between observers and EM for whiting trips. Current regulations at § 660.604(m) restrict vessel operators on whiting trips from revising a monitoring declaration more than twice per calendar year,

except in the case of an EM system malfunction. The limit was intended to prevent frequent switching that could disrupt deployment planning and affect the availability of observers. As NMFS described in the September 2016 proposed rule (81 FR 61161; September 6, 2016), and finalized in the June 2019 final rule (84 FR 31146; June 28, 2019), NMFS may waive the limit on switching between monitoring types if it is not necessary for planning observer deployment. After the final rule published, NMFS and the Council determined that a regulatory restriction on how many times a vessel taking whiting trips can switch between observers and EM was unnecessary. Under current regulations, vessels owners are required to provide a tentative fishing plan when they apply for their annual EM Authorization, in which the vessel owner gives NMFS advance notice of their plans to use EM and observers for the upcoming fishing year. WCGOP and observer providers then can use this information for planning purposes. This information negates the need for restrictions on switching between observers and EM. Therefore, the Council recommended, and NMFS proposes eliminating the limit on switching between EM and observers for whiting trips under this proposed rule. This proposed change would align the flexibility in moving between EM and observer coverage for all trip types (bottom trawl, whiting midwater, non-whiting midwater, and fixed gear).

4. Mothership/Catcher Vessel (MS/CV) Endorsement.

Current EM regulations at § 660.604(e)(1)(iii) require a vessel applying to use EM in the mothership sector to have a valid mothership/catcher vessel (MS/CV) endorsement to qualify for authorization. This requirement was initially included for vessels testing EM under EFPs, as having valid permits for all intended fishing activities is a standard requirement for EFP eligibility. However, the regulations governing Mothership cooperatives at § 660.150(g)(1) allow for a vessel without an MS/CV endorsement, but that is enrolled in the mothership cooperative to deliver to a

mothership. It was not the Council's and NMFS's intent to restrict participation in EM to only those vessels with MS/CV endorsement. Including this eligibility criterion was a holdover from the EFP terms and conditions and is not consistent with Council intent. Therefore, this proposed rule would remove the eligibility requirement at § 660.604(e)(1)(iii) for an MS/CV endorsement to be eligible to use EM on MS/CV trips.

5. Logbook Processing

This proposed regulatory change would require all vessel owners to submit discard logbooks directly to their EM service providers following a fishing trip in which EM was used. EM service providers would receive and process discard logbooks by entering data, performing quality assurance and control, and subsequently submit logbook data to NMFS for review. Service providers would be required to submit initial logbook data to NMFS within two business days of receipt from vessel operators.

Current EM regulations at § 660.604(s) assume vessel operators would submit discard logbooks directly to NMFS or its agent for processing. Under this model, NMFS would data enter, and check logbooks for accuracy and issues, which would then be used to initially debit discarded catch from vessel IFQ accounts. EM service providers review video data separately, with WCGOP providing some logbook data to EM service providers that is necessary for completing the video review, such as trawl gear codend capacity, but with most identifying logbook data withheld to ensure video review is done blind.

Under current regulations, having NMFS process logbooks directly would require back-and-forth with EM service providers to accurately match logbooks with EM trips, select trips or hauls for review, compare logbook and EM discard estimates, and investigate any discrepancies. Vessel owners must submit logbooks directly to NMFS via a secure transmission method to comply with confidentiality and data security requirements, limiting the methods by which NMFS can receive logbooks.

At the November 2020 Groundfish Electronic Monitoring Program Advisory Committee (GEMPAC) meeting, GEMPAC members proposed an alternative procedure in which EM service providers would receive, complete data entry, review logbook data, and submit results to NMFS. NMFS and the Council determined it would be more efficient and cost effective to have EM service providers receive both logbooks and EM data directly from vessel owners for initial processing, entry, and quality control, and simply report final data to NMFS. NMFS would also receive logbooks, and use its debriefing procedures to carry out quality control on the logbook data and to check for potential bias in the video review. Having EM service providers process logbooks would also allow individual vessel operators to develop optimal submission methods for discard logbooks with their respective EM service providers. NMFS supports the Council recommendation and therefore proposes the change through this proposed rule.

6. Reporting Deadlines for EM Service Providers

Under current regulations at § 660.603, EM service providers are responsible for providing various feedback reports to vessel operators, and summaries to NMFS. These reports include logbook data, technical assistance, vessel operator feedback, EM summary data, and compliance reports. Submission of this information by service providers has been required in regulations as of June 2019, however, deadlines for the submission of these reports were not originally specified in regulation. Under this proposed rule, NMFS would establish submission deadlines for these required EM service providers' reports. This proposed change would allow NMFS to enforce timely submission of EM data. The submission deadlines for each report are specified below.

A. Discard Logbooks

As described previously in this proposed rule, vessel operators would submit discard logbooks directly to EM service providers for processing. The Council recommended, and NMFS is proposing, that service providers would submit the initial

logbook data to NMFS within two days of receipt from vessel operators. This deadline would help to ensure timely debiting of discards from vessel IFQ accounts, and is consistent with submission timelines used for EM EFPs, and WCGOP observer data. Setting the deadline based on the receipt of initial, rather than final, logbook data would ensure service providers are not held responsible for late or incomplete submissions from vessel operators. After initial logbook submission, the EM service provider would work with the vessel operator to review data and, if necessary, revise and submit updated logbook data. Under these proposed regulatory changes, requiring concrete deadlines for these reports in the regulations would ensure the timely submission of discard estimates from logbook data, which is essential for discard accounting in the Catch Share program, and to provide clear expectations for all participants.

B. Reports of Technical Assistance

Under current regulations at § 660.603(k), EM service providers are required to submit reports to NMFS when technical assistance is requested by vessels on EM trips. These reports of technical assistance allow NMFS to monitor the performance of EM systems and field services, and follow up should any potential enforcement issues arise. Under this proposed rule, NMFS would require technical assistance reports to be submitted within 24 hours of the EM service provider being notified by the vessel operator. This change would be consistent with how these notifications have occurred in the EM EFP.

C. Vessel Feedback Reports

Under current regulations at § 660.603(m)(4), EM service providers are required to provide feedback reports to vessel operators and field services staff. Feedback is required on EM systems, crew responsibilities, and any other information that would improve the quality and effectiveness of data collection on the vessel. Through this proposed rule, NMFS would require feedback to be submitted to vessels within three

weeks of the date EM data is received from the vessel operator for processing by the service provider. Prospective service providers, EFP vessel operators, and industry members have provided feedback through the Council process that three weeks is a reasonable timeline for the submission vessel feedback reports. Specifically, a submission deadline of three weeks after the service provider receives the hard drive from a vessel would ensure that EM service providers are not held responsible for late submissions by vessel operators. A shorter timeline may be more difficult for EM service providers to meet if they receive several hard drives at once, such as during busy times of the year. However, a longer timeline may not provide timely feedback to vessel operators and updates to discard data. Concrete and enforceable deadlines are necessary to ensure service providers submit feedback reports in a timely manner, and establish the data processing procedures to meet these deadlines. It is critically important to provide timely feedback to vessel captains and crew on catch handling, EM system care, and other aspects of operations that affect data quality. Timely feedback to vessels would help to ensure the quality of EM data, and reliability of the EM program in meeting monitoring goals of the Catch Share program.

D. EM Summary Data and Compliance Reports

Current regulations at § 660.603(m)(5) require service providers to submit EM summary data and compliance reports to NMFS following completion of video review. EM summary data includes discard estimates, fishing activity information, and trip metadata. This proposed rule would require EM summary data and compliance reports to be submitted to NMFS three weeks from the date the vessel operator submits EM data for processing. EM summary data and compliance reports are used by NMFS to debit vessel accounts, monitor program and vessel performance, and enforce requirements of the EM program. Trip metadata is an essential record of when and where EM data were created by the vessel, submission time, date and location of review, and point of contacts for

reviewers. Trip metadata ensures fishing data can be accurately corroborated with logbook data and is necessary for a complete chain of custody and accountability between the vessel, service provider, and NMFS. Catch discards would initially be debited from vessel accounts in the IFQ database using logbook data, as described previously; discards would largely be accounted for following logbook processing, and audited using EM data. If there are large discrepancies between the logbook and EM summary data, then a longer reporting timeline may result in vessel account owners experiencing unexpected debits, or being unable to “close-out” an account for a fishing trip until the EM data are received. In the EM EFP, reporting timelines have ranged from one to two weeks after receipt of the hard drive in 2015 to one to two months during periods of higher fishing activity in 2019. Feedback from prospective EM service providers is that three weeks after receipt of the hard drive may be a reasonable timeline for completion of the video review and submission of reports. NMFS recommended three weeks, with support from the Council’s GEMPAC and Groundfish Management Team, as being a reasonable amount of time for service providers to complete review and subsequently prepare summary data and compliance reports.

7. Retention of EM Data

This proposed rule would change the minimum length of time service providers are required to retain EM data records. Under current regulations, service providers must maintain all of a vessel's EM data, reports, and other records specified in regulations at § 660.603(m) *Data services* for a period of not less than three years after the date of landing for that trip. The rationale for originally adopting a three-year minimum retention period for EM data is detailed in the June 2019 final rule (84 FR 31146; June 28, 2019). Since that final rule, NMFS evaluated the feasibility and cost effectiveness of a shorter retention period, and has developed a national policy on the minimum time that EM data must be retained.

Under this proposed rule, EM service providers would be required to maintain EM data for a period of not less than 12 months starting after NMFS has officially completed end-of-year account reconciliation and catch monitoring. This proposed regulatory change would align with the 12-month minimum data retention period in the NMFS Procedural Directive 04-115-03 (see **ADDRESSES**) for third-party minimum data retention in EM programs for federally managed U.S. fisheries. Review of catch monitoring data, including EM data, usually extends beyond the close of the fishery at the end of the calendar year. Starting the clock for the minimum retention period following end-of-the-year data reconciliation would best meet the recommendations of the procedural directive.

8. Change in Definition of Conflict of Interest for EM Service Providers

This proposed change would revise regulations at § 660.603(h) defining limitations on conflicts of interest for EM service providers to exclude providing other types of technical and equipment services to fishing companies. The definition in regulations currently excludes “the provision of observer, catch monitor, EM or other biological sampling services, in any Federal or state-managed fisheries” from the definition of a “direct financial interest.” After the final rule was published, an EM service provider brought to the Council’s attention that many EM vendors provide a range of other services to fishing companies, including vessel monitoring systems (VMS), automatic identification system (AIS) transponders, telemetry (such as product temperature monitoring for seafood safety), buoy and gear monitoring, sonar systems, and mandatory safety services. Under the current regulatory definition, such EM vendors would be ineligible to provide EM services. The EM service provider noted that there is no evidence to suggest that providing such technical services to fishing companies creates any greater conflict of interest than providing biological sampling services, and requested that the definition be revised. Therefore, the Council recommended, and NMFS is

proposing, revising the definition of a conflict of interest at § 660.603(h) to exclude providing other types of technical and equipment services to fishing companies.

9. Technical Corrections

In addition to the proposed regulatory changes already described, the Council also recommended two clarifying corrections to language in the EM program regulations. The first correction is technical and would change the reference to “a NMFS-accepted EM Service Plan” under § 660.603(a)(1) to correctly refer to paragraph § 660.603(b)(1)(vii). The second correction would change a reference to "owner or operator" to instead be "authorized representative of the vessel" in § 660.603(n)(3), which is consistent with language in other regulations in 50 CFR 660-Fisheries Off West Coast States. This correction would clarify that a representative designated by the vessel owner, rather than solely the vessel owner or operator, is allowed to transfer EM data to service providers for review. NMFS supports these changes, and is proposing these changes through this proposed rule.

III. Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP, Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment. In making the final determination, NMFS will take into account the complete record, including the data, views, and comments received during the comment period.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the Pacific Coast Groundfish FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of

an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866. This proposed rule does not contain policies with Federalism or "takings" implications as those terms are defined in Executive Orders 13132 and 12630, respectively.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **Background** section of the preamble. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities.

The RFA (5 U.S.C. 601 *et seq.*) requires government agencies to assess the effects that regulatory alternatives would have on small entities, defined as any business/organization independently owned and operated and not dominant in its field of operation (including its affiliates). A small harvesting business has combined annual receipts of \$11 million or less for all affiliated operations worldwide. A small fish-processing business is one that employs 750 or fewer persons for all affiliated operations worldwide.

For marinas and charter/party boats, a small business is one that has annual receipts not in excess of \$7.5 million. A wholesale business servicing the fishing industry

is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A nonprofit organization is determined to be “not dominant in its field of operation” if it is considered small under one of the following Small Business Administration (SBA) size standards: environmental, conservation, or professional organizations are considered small if they have combined annual receipts of \$15 million or less, and other organizations are considered small if they have combined annual receipts of \$7.5 million or less.

The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

This proposed rule would impact mainly commercial harvesting entities engaged in the groundfish limited entry trawl fishery. Although this action proposes an EM program regulations for only two trip types in the limited entry trawl fishery—non-whiting midwater trawl, and bottom trawl— any limited entry trawl vessel may participate in these components, provided they comply with its requirements, and therefore may be eligible to use EM as applied to these two trawl gear sectors. In addition, vessels deploying EM are likely to be a subset of the overall trawl fleet, as some vessels would likely choose to continue to use observers. However, as all trawl vessels could potentially use EM in the future under the proposed action, this IRFA analyzes impacts to the entire trawl fleet. The total number of vessels that may be eligible to use EM is 175, the total number of limited entry trawl permits in 2021, and includes those vessels that do use bottom trawl and non-whiting midwater trawl gear, and those that do not. Given these entities participate in the program, they are most likely to be impacted by this rule in the short term. This number may be an underestimate if additional vessels elect to participate in the EM program in the future.

Federal Rules which May Duplicate, Overlap, or Conflict with this Proposed Rule

The proposed regulations do not create overlapping regulations with any state regulations or other Federal laws.

A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities

The RFA requires Federal agencies to conduct a full RFA analysis unless the agency can certify that the proposed and/or final rule would not have a significant economic impact on a substantial number of small entities. This determination can be made at either the proposed or final rule stage. If the agency can certify, it need not prepare an IRFA, a final regulatory flexibility analysis (FRFA), or a Small Entity Compliance Guide or undertake a subsequent periodic review of such rules. The NMFS Guidelines for Economic Analysis of Fishery Management Actions suggest two criteria to consider in determining the significance of regulatory impacts, namely, disproportionality and profitability. These criteria relate to the basic purpose of the RFA, *i.e.*, to consider the effect of regulations on small businesses and other small entities, recognizing that regulations are frequently unable to provide short-term cash reserves to finance operations through several months or years until their positive effects start paying off. If either criterion is met for a substantial number of small entities, then the rule should not be certified for not having an effect on small entities. These criterion raise two questions: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? Do the regulations significantly reduce profit for a substantial number of small entities?

The preferred alternative for this rule will not have a significant impact when comparing small versus large businesses in terms of disproportionality and profitability given available information. These regulations are likely to reduce fishing costs for both

small and large businesses. EM is an optional monitoring alternative to observers, and may provide cost savings for some vessels. Economic effects of the proposed action are expected to range from neutral to positive when compared to the status quo. Nonetheless, NMFS has prepared this IRFA. Through the rulemaking process associated with this action, NMFS is requesting comments on this conclusion.

The economic impacts on small entities resulting from the proposed action range from neutral to positive; these entities will have a choice between hiring an observer, as is status quo, or using EM. The choice is expected to be based on relative costs and operational flexibility. Observer costs are currently \$499 to \$537 per seaday. Under EM, NMFS estimates vessels in the bottom trawl fishery will spend between \$342/seaday (which include the cost of new equipment and installation) or \$285/seaday (without equipment costs). These estimates are based on 412 seadays for 10 bottom trawl vessels participating in EFPs from 2019-2020. Under EM, NMFS estimates per seaday costs for non-whiting midwater trawl trips to range from \$142/seaday (with equipment costs), and \$120/seaday (without equipment costs). These estimates are based on 3,215 seadays for 30 midwater trawl vessels participating in EFPs from 2091-2020, and averaged cost estimates from four prospective EM service providers. These cost estimates are detailed in section 4.2 “Industry Costs” of the IRFA included in the supporting documents for this proposed rule. These costs are likely an overestimate and not an accurate estimate of seaday costs for this gear type because it does not incorporate revenue from seadays pursuing bottom trawl and whiting activities that are also part of these vessels’ portfolios. Cost of EM service, including equipment installation and maintenance, along with video review and data service is expected to vary by service provider. Entities participating this fishery are not required to use EM, and have the choice to use a human observer instead of EM. Furthermore, the cost of EM is likely to decrease as technology used in EM systems (cameras, sensors, and electronic storage devices) that meets current

specification necessary to meet monitoring requirements becomes cheaper over time.

Therefore, this proposed action would not impose new costs on these small entities, and will likely provide measurable cost savings over time as individual vessels choose the most affordable at-sea monitoring systems relative to their fishing operations.

The components of this rule have the potential to positively impact all entities in the catch share sector of the fishery, regardless of size. Therefore, the rule would impose effects on “a substantial number” of small entities, however, these effects are expected to range from neutral (if entities choose not to use the added flexibility of the provisions in this rule) to positive. Data used to inform this analysis was collected through EFPs and collaboration with industry and non-government organizations from 2012 to present.

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action nor are there are no significant alternative to the proposed rule that will accomplish the stated objectives and that minimize any significant economic impact of the proposed rule on small entities. As fishermen are given a choice between two alternative monitoring systems (observers vs EM), this rule is likely to have neutral to positive effects on small entities.

These regulations are likely to reduce fishing costs for both small and large businesses. Through this proposed rule, NMFS is requesting comments on this conclusion. The proposed action and alternatives are described in detail in the Council’s regulatory amendment and the accompanying regulatory impact review (RIR)/IRFA (see **ADDRESSES**).

Description of the Proposed Reporting, Record-Keeping, and Other Compliance Requirements of this Proposed Rule Under the Paperwork Reduction Act (PRA)

The proposed action contains collection-of-information requirements that have been previously approved under OMB control number 0648-0785, West Coast Region Groundfish Trawl Fishery Electronic Monitoring Program, as per the PRA requirements.

The requirements include vessel owner EM applications, renewals, and reports, EM service providers applications, renewals and reports, as well as vessel operator log-book, and hard drive submission. This proposed rule would revise collection-of-information requirements to include submission of information for the formation of self-enforcing cooperative agreements. The proposed action contains changes to collection-of-information requirements that are subject to review and approval by the Office of Management and Budget (OMB) as per the PRA requirements. NMFS has submitted these requirements to OMB for approval under OMB control number 0648-0785 West Coast Region Groundfish Trawl Fishery Electronic Monitoring Program. This proposed rule would revise collection-of-information requirements to include submission of information for the formation of self-enforcing cooperative agreements. Collection of information for self-enforcing agreements is not mandatory, as self-enforcing agreements are an optional provision of the EM program under collection 0648-0785. Some vessel owners may choose to apply for a group EM authorization under a self-enforcing agreement in lieu of individual vessel authorizations. The self-enforcing agreement would be submitted with the initial applications for vessels in the group, and requires approval prior to accepting final applications from the group. One self-enforcing agreement would be completed and submitted by a designated representative for each group of vessel owners applying under a group authorization. NMFS expects no more than three such self-enforcing group agreements for the first three years of this collection. Each self-enforcing agreement is expected to take approximately 3 hours to complete. The total annualized time burden to prepare self-enforcing agreements would be 3 hours (3 hours x 3 agreements/ 3 years). The burden cost of one copy of the self-enforcing agreement is estimated at \$3.00 (\$0.10/page x 30 pages). A designated representative, or manager of the self-enforcing cooperative would hold at least one copy. To be deemed eligible to operate under the agreement, vessel owners and operators would be required to

have executed a copy of the agreement for an adherence agreement under which they agree to be bound. At most, 10 vessel owners are expected to participate in any one self-enforcing agreement, each would be required to have a copy of the agreement, plus one original copy held by the cooperative manager, is expected to result in a total annualized burden of \$33.00 (\$3.00 x 11).

This proposed rule includes a minor revision to declaration requirements for groundfish vessels using EM under West Coast Region Vessel Monitoring Requirement in the Pacific Coast Groundfish Fishery (OMB Control Number 0648-0573). Vessels in the Pacific Coast Groundfish Fishery are required to declare the gear type and monitoring they will use on a given trip. Under this proposed rule, vessels would be able to declare “electronic monitoring” or “observers” as possible monitoring types on trips with bottom trawl and non-whiting midwater trawl gear. The change would add additional potential answers to an existing declaration questionnaire, which does not affect the number of entities required to comply with the declaration requirement (OMB Control Number 0648-0573). Therefore, the proposed rule does not increase the time or cost burden associated with this requirement.

Similarly, this proposed rule would adjust the requirement for EM vessels to notify the West Coast Groundfish Observer Program before each trip in place of the existing notification to an individual vessel’s observer provider when using a catch share observer. This change would not be expected to increase the time or cost burden associated with the existing notification requirements approved under the collection Observer Programs’ Information That Can be Gathered Only Through Questions (OMB Control Number 0648-0593).

The requirement for first receivers to report protected and prohibited species landings was previously approved under the collection Northwest Region Groundfish Trawl Fishery Monitoring and Catch Accounting Program (OMB Control Number 0648-

0619). Under the proposed rule, first receivers would continue to report protected and prohibited species landings, but would also report landings of catch from trips monitored using EM under “maximized” and “optimized” retention rules with bottom trawl and non-whiting midwater trawl gear. The change would add additional potential answers to an existing questionnaire, and is not be expected to change the time or cost burden or number of entities associated with this requirement.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at www.reginfo.gov/public/do/PRAMain.

For more information, these collections, and all currently approved NOAA collections can be viewed at <https://www.reginfo.gov/public/do/PRASearch#> by entering the related OMB control number.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indians.

Dated: February 14, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. Authority citation for part 660 continues to read as follows

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C 7001 *et seq.*

2. In § 660.13 revise paragraph (d)(4)(iv)(A) to read as follows:

§ 660.13 Recordkeeping and reporting.

* * * * *

(d) * * *

(4) * * *

(iv) * * *

(A) * * *

(1) Limited entry fixed gear, not including shorebased IFQ,

(2) Limited entry groundfish non-trawl, shorebased IFQ, observer,

(3) Limited entry groundfish non-trawl, shorebased IFQ, electronic monitoring,

(4) Limited entry midwater trawl, non-whiting shorebased IFQ, observer,

(5) Limited entry midwater trawl, non-whiting shorebased IFQ, electronic monitoring,

(6) Limited entry midwater trawl, Pacific whiting shorebased IFQ, observer,

(7) Limited entry midwater trawl, Pacific whiting shorebased IFQ, electronic monitoring,

(8) Limited entry midwater trawl, Pacific whiting catcher/processor sector,

(9) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership), observer,

(10) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel), electronic monitoring,

(11) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl or selective flatfish trawl,

(12) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl or selective flatfish trawl, electronic monitoring,

(13) Limited entry demersal trawl, shorebased IFQ, observer

(14) Limited entry demersal trawl, shorebased IFQ, electronic monitoring,

(15) Limited entry selective flatfish trawl, shorebased IFQ, observer,

(16) Limited entry selective flatfish trawl, shorebased IFQ, electronic monitoring,

(17) Non-groundfish trawl gear for pink shrimp,

(18) Non-groundfish trawl gear for ridgeback prawn,

(19) Non-groundfish trawl gear for California halibut,

(20) Non-groundfish trawl gear for sea cucumber,

(21) Open access longline gear for groundfish,

(22) Open access Pacific halibut longline gear,

(23) Open access groundfish trap or pot gear,

(24) Open access Dungeness crab trap or pot gear,

(25) Open access prawn trap or pot gear,

(26) Open access sheephead trap or pot gear,

(27) Open access line gear for groundfish,

- (28) Open access HMS line gear,
- (29) Open access salmon troll gear,
- (30) Open access California Halibut line gear,
- (31) Open access Coastal Pelagic Species net gear,
- (32) Other gear,
- (33) Tribal trawl,
- (34) Open access California gillnet complex gear, or
- (35) Gear testing.

* * * * *

3. In § 660.601, add the definition of “Prohibited species” in alphabetical order to read as follows:

§ 660.601 Definitions.

* * * * *

Prohibited species means those species and species groups defined at § 660.11; Dungeness crab caught south of Point Reyes, California; fish in excess of state or Federal limits; fish below a state or Federal minimum size; and species for which the vessel or vessel representative does not have a state or Federal permit.

* * * * *

4. In § 660.603, revise paragraphs (a)(1), (h)(1) introductory text, (k)(5), (m) introductory text, (m)(1), (m)(3), (m)(4) introductory text, (m)(5), (m)(6) and (n)(3) to read as follows:

§ 660.603 Electronic monitoring provider permits and responsibilities.

(a) * * *

(1) Operate under a NMFS-accepted EM Service Plan (see paragraph (b)(1)(vii) of this section).

* * * * *

(h) * * *

(1) EM service providers and their employees must not have a direct financial interest, other than the provision of observer, catch monitor, EM, other biological sampling services, VMS, AIS transponders, telemetry (such as product temperature monitoring for seafood safety), buoy and gear monitoring, sonar systems, mandatory safety services (*i.e.* GMDSS), or other technical or equipment services, in any Federal or state managed fisheries, including but not limited to:

* * * * *

(k) * * *

(5) The EM service provider must submit to NMFS reports of requests for technical assistance from vessels, including when the call or visit was made, the nature of the issue, and how it was resolved. Reports must be submitted to NMFS within 24 hours of the EM service provider being notified of the request for technical assistance.

* * * * *

(m) *Data services.* For vessels with which it has a contract (see § 660.604(k)), the EM service provider must provide and manage EM data and logbook processing, reporting, and record retention services, as described below and according to a NMFS-approved EM Service Plan, which is required under paragraph (b)(1)(vii) of this section, and as described in the EM Program Manual or other written and oral instructions provided by the EM Program, and such that the EM Program achieves its purpose as defined at § 660.600(b).

(1) The EM service provider must process vessels' EM data and logbooks according to a prescribed coverage level or sampling scheme, as specified by NMFS in consultation with the Council, and determine an estimate of discards for each trip using standardized estimation methods specified by NMFS. NMFS will maintain manuals for EM and logbook data processing protocols on its website.

* * * * *

(3) The EM service provider must track hard drives and EM datasets throughout their cycles, including documenting any access and modifications. If end-to-end encryption is not used to protect EM data, EM data must be removed from hard drives or other mediums before returning them to the field.

(4) The EM service provider must communicate with vessel operators and NMFS to coordinate data service needs, resolve specific program issues, and provide feedback on program operations. No later than three weeks from the date of receipt of EM data for processing from the vessel operator, the EM service provider must provide feedback to vessel representatives, field services staff, and NMFS regarding:

* * * * *

(5) *Submission of data and reports.* On behalf of vessels with which it has a contract (see § 660.604(k)), the EM service provider must submit to NMFS logbook data, EM summary reports, including discard estimates, fishing activity information, and meta data (*e.g.*, image quality, reviewer name), and incident reports of compliance issues according to a NMFS-accepted EM Service Plan, which is required under paragraph (b)(1)(vii) of this section, and as described in the EM Program Manual or other written and oral instructions provided by the EM Program, such that the EM program achieves its purpose as defined at § 660.600(b). Logbook data must be submitted to NMFS within two business days of receipt from the vessel operator. EM summary reports must be submitted within three weeks of the date the EM data was received by the EM service provider from the vessel operator. If NMFS determines that the information does not meet these standards, NMFS may require the EM service provider to correct and resubmit the datasets and reports.

(6) *Retention of records.* Following an EM trip, the EM service provider must maintain all of a vessel's EM data and other records specified in this section, or used in the preparation of records or reports specified in this section or corrections to these

reports. The EM service provider must maintain EM data for a period of not less than 12 months after NMFS has completed its determination of the total base year IFQ catch for all vessels for end-of-year account reconciliation (*i.e.*, base year is the year in which the EM trip was taken). NMFS will issue a public notice when end-of-the-year account reconciliation has been completed, on or about March 1 of each year. The EM service provider must maintain summary EM data and other records for a period of not less than three years after the date of landing for that trip. EM data and other records must be stored such that the integrity and security of the records is maintained for the duration of the retention period. The EM service provider must produce EM data and other records immediately upon request by NMFS or an authorized officer.

(n) * * *

(3) Must not release a vessel's EM data and other records specified in this section (including documents containing such data and observations or summaries thereof) except to NMFS and authorized officers as provided in paragraph (m)(6) of this section, or as authorized by an authorized representative of the vessel.

5. In § 660.604,

- a. Revise paragraphs (e) introductory text and (e)(1);
- b. Remove paragraph (e)(5);
- c. Revise paragraphs (f), (i), (m), and (n);
- d. Add paragraphs (p)(3) and (4);
- e. Revise paragraphs (q), (s)(2), (s)(3)(i) through (ii); and
- f. Remove and reserve paragraph (s)(3)(iii).

The revisions and additions read as follows:

§ 660.604 Vessel and first receiver responsibilities.

* * * * *

(e) *Electronic Monitoring Authorization.* To obtain an EM Authorization, a vessel owner must submit an initial application to the NMFS West Coast Region Fisheries Permit Office, and then a final application that includes an EM system certification and a vessel monitoring plan (VMP). NMFS will only review complete applications. NMFS will issue a public notice at least 90 calendar days prior to when it will begin accepting applications for EM Authorizations for the first year of the Program. Once NMFS begins accepting applications, vessel owners that want to have their EM Authorizations effective for January 1 of the following calendar year must submit their complete application to NMFS by October 1 of the preceding calendar year. Vessel owners that want to have their EM Authorizations effective for May 15 must submit their complete application to NMFS by February 15 of the same year. In lieu of individual EM Authorizations, a group of eligible vessel owners participating in the shorebased IFQ sector may obtain a group EM Authorization through a self-enforcing agreement. This agreement allows a group of eligible vessels to encourage compliance with the requirements of this section through a private, contractual arrangement. To be considered for a group EM Authorization, a group of vessel owners must submit a completed application package to NMFS for review and approval. As part of a group EM Authorization application, participating vessel owners must agree to conduct fishing operations according to the self-enforcement agreement. For a vessel to be deemed eligible to operate under the agreement, its owner(s) and its operator(s) must have executed a copy of the agreement or an adherence agreement under which they agree to be bound by the agreement's terms. The existence of a self-enforcing agreement among EM vessels does not foreclose the possibility of independent enforcement action by NMFS OLE or authorized officers.

(1) *Initial application.* To be considered for an EM Authorization, the vessel owner must:

(i) Submit a completed application form provided by NMFS, signed and dated by an authorized representative of the vessel;

(ii) Meet the following eligibility criteria:

(A) The applicant owns the vessel proposed to be used;

(B) The vessel has a valid Pacific Coast Groundfish limited entry, trawl-endorsed permit registered to it;

(C) The vessel is participating in the Pacific whiting IFQ fishery, mothership sector, or the Shorebased IFQ sector;

(D) The vessel is able to accommodate the EM system, including providing sufficient uninterrupted electrical power, suitable camera mounts, adequate lighting, and fittings for hydraulic lines to enable connection of a pressure transducer;

(E) The vessel owner and operator are willing and able to comply with all applicable requirements of this section and to operate under a NMFS-accepted VMP; and

(F) The vessel owner and operator are willing and able to comply with the terms and conditions of a self-enforcing agreement that was submitted as part of a group authorization application, if applicable.

(iii) If applying for a group EM Authorization, submit a complete proposed self-enforcing agreement that describes how the group's operations will be conducted to meet the requirements of this section. NMFS will develop EM Program Guidelines containing best practices and templates and make them available on NMFS's website to assist vessel owners in developing a self-enforcing agreement. The self-enforcing agreement must include descriptions of the following:

(A) A list of all participating vessels, owners, operators, and other parties;

(B) The name and contact information of a designated representative who will be responsible for ensuring that each vessel is complying with the terms and conditions of

the agreement and the requirements of this section, and who will promptly inform the appropriate parties and NMFS if any vessel fails to comply;

(C) Eligibility criteria for participating vessels, owners, and operators;

(D) The roles and responsibilities of participating vessels, owners, operators, the designated representative, and any other parties to the agreement;

(E) Procedures for communication between participating vessels, owners, operators, the designated representative, and any other parties to the agreement, NMFS or its designated agent, and EM service providers, for the execution of the agreement and the requirements of this section;

(F) Performance standards or requirements for equipment, if applicable;

(G) Reporting requirements, if applicable;

(H) Time and area restrictions, if applicable;

(I) Provisions for the use and protection of confidential data necessary for execution of the agreement;

(J) Provisions to encourage or enforce the compliance of members with the agreement and the requirements of this section;

(K) Procedures for addressing the non-compliance of members with the agreement and the requirements of this section, including procedures for restricting or terminating vessel's participation in the agreement;

(L) Procedures for notifying NMFS when a participating vessel or its owner(s) or operator(s) are not complying with the terms of the agreement or the requirements of this section;

(M) Procedures for participating vessels, owners, operators, the designated representative, or other parties to the agreement, to exit the agreement;

(N) Any other provisions that the applicants deem necessary for the execution of the agreement; and

(O) Procedures for the designated representative to submit an annual report to the Council prior to applying to renew a group EM authorization containing information about the group's performance from the previous year, including a description of any actions taken by the self-enforcing group in response to the non-compliance of members with the agreement.

* * * * *

(f) *Changes to a NMFS-accepted VMP or NMFS-approved self-enforcing agreement.* A vessel owner may make changes to a NMFS-accepted VMP by submitting a revised plan or plan addendum to NMFS in writing. A group may make changes to an approved self-enforcing agreement by submitting a revised agreement or agreement addendum to NMFS in writing. NMFS will review and accept the change if it meets all the requirements of this section. A VMP or self-enforcing agreement addendum must contain:

(1) The date and the name and signature of the vessel owner, or designated representative for a self-enforcing agreement;

(2) Address, telephone number, fax number and email address of the person submitting the revised plan or addendum; and

(3) A complete description of the proposed change.

* * * * *

(i) *Renewing an EM Authorization.* To maintain a valid EM Authorization, vessel owners must renew annually prior to the permit expiration date. NMFS will mail EM Authorization renewal forms to existing EM Authorization holders each year on or about: September 1 for shorebased IFQ vessels, and January 1 for Pacific whiting IFQ and MS/CV vessels. Vessel owners who want to have their Authorizations effective for January 1 of the following calendar year must submit their complete renewal form to NMFS by October 15. Vessel owners who want to have their EM Authorizations effective for May 15 of the following calendar year must submit their complete renewal

form to NMFS by February 15.

* * * * *

(m) *Declaration reports.* The operator of a vessel with a valid EM Authorization must make a declaration report to NMFS OLE prior to leaving port following the process described at § 660.13(d)(4). A declaration report will be valid until another declaration report revising the existing gear or monitoring declaration is received by NMFS OLE.

(n) *Observer requirements.* The operator of a vessel with a valid EM Authorization must provide advanced notice to NMFS, at least 48 hours prior to departing port, of the vessel operator's intent to take a trip under EM, including: vessel name, permit number; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; and the vessel's trip plan, including area to be fished, gear type to be used, and whether the vessel will use maximized or optimized retention rules for the trip as defined at paragraphs (p)(3) and (4) of this section. NMFS may waive this requirement for vessels declared into the Pacific whiting IFQ fishery or mothership sector with prior notice. If NMFS notifies the vessel owner, operator, or manager of any requirement to carry an observer, the vessel may not be used to fish for groundfish without carrying an observer. The vessel operator must comply with the following requirements on a trip that the vessel owner, operator, or manager has been notified is required to carry an observer.

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(p) * * *

(3) *Maximized retention bottom trawl and non-whiting midwater trawl trips.* A vessel operator on a declared maximized retention trip using bottom trawl gear, or midwater trawl gear in which Pacific whiting constitutes less than 50 percent of the catch by weight at landing, the vessel must not sort catch at-sea and must retain all catch until landing, with exceptions listed below in paragraphs (p)(3)(i) through (v) of this section. All discards must be discarded following instructions in the VMP per paragraph (e)(iii) of

this section. All discards, regardless of the source, must be reported in the bottom trawl logbook, including the species (where possible), estimated weight, and reason for discard. The vessel operator is responsible for ensuring that all catch is handled in a manner that enables the EM system to record it.

(i) Minor operational discards are permitted. Minor operational discards include mutilated fish; fish vented from an overfull codend; and fish removed from the deck and fishing gear during cleaning. Minor operational discards do not include discards that result when more catch is taken than is necessary to fill the hold or catch from a tow that is not delivered.

(ii) Large individual marine organisms (*i.e.*, all marine mammals, sea turtles, and non-ESA-listed seabirds, and fish species longer than 6 ft (1.8 m) in length) may be discarded. For any ESA-listed seabirds that are brought on board, vessel operators must follow any relevant instructions for handling and disposition under § 660.21(c)(1)(v).

(iii) Crabs, starfish, coral, sponges, and other invertebrates may be discarded.

(iv) Trash, mud, rocks, and other inorganic debris may be discarded.

(v) A discard that is the result of an event that is beyond the control of the vessel operator or crew, such as a safety issue or mechanical failure, is permitted.

(4) *Optimized retention bottom trawl and non-whiting midwater trawl trips.* On a declared optimized retention trip using bottom trawl gear, or midwater trawl gear in which Pacific whiting constitutes less than 50 percent of the catch by weight at landing, the vessel owner and operator are responsible for the following:

(i) The vessel must retain IFQ species (as defined at § 660.140(c)), except for Arrowtooth flounder, English sole, Dover sole, deep sea sole, Pacific sanddab, Pacific whiting, lingcod and starry flounder; must retain salmon and eulachon; and must retain the following non-IFQ species greenland turbot; slender sole; hybrid sole; c-o sole; bigmouth sole; fantail sole; hornyhead turbot; spotted turbot; California halibut; northern

rockfish; black rockfish; blue rockfish; shortbelly rockfish; olive rockfish; Puget Sound rockfish; semaphore rockfish; walleye pollock; slender codling; Pacific tom cod; with exceptions listed in paragraphs (p)(4)(i)(A) and (B) of this section.

(A) Mutilated and depredated fish may be discarded.

(B) A discard that is the result of an event that is beyond the control of the vessel operator or crew, such as a safety issue or mechanical failure, is permitted.

(ii) The vessel must discard Pacific halibut, green sturgeon, California halibut (except as allowed by state regulations), and nearshore groundfish species below state commercial minimum size limits, following instructions in the NMFS-accepted VMP.

(iii) Incidentally caught marine mammals, non-ESA-listed seabirds, sea turtles, other ESA-listed fish, and Dungeness crab caught seaward of Washington or Oregon or south of Point Reyes, California, as described at § 660.11 *Prohibited species*, must be discarded following instructions in the NMFS-accepted VMP per paragraph (e)(iii) of this section. For any ESA-listed seabirds that are brought on board, vessel operators must follow any relevant instructions for handling and disposition under § 660.21(c)(1)(v).

(iv) Crabs, starfish, coral, sponges, and other invertebrates may be discarded.

(v) Trash, mud, rocks, and other inorganic debris may be discarded.

(vi) All discards must be discarded following instructions in the VMP per paragraph (e)(iii) of this section. All discards, regardless of the source, must be reported in the bottom trawl logbook, including the species (where possible), estimated weight, and reason for discard. The vessel operator is responsible for ensuring that all catch is handled in a manner that enables the EM system to record it.

(q) *Changes to retention requirements.* NMFS may specify alternate retention requirements in a NMFS-accepted VMP through the process described in paragraph (f) of this section, after consultation with the Council and issuance of a public notice notifying the public of the changes. Alternate retention requirements must be sufficient to provide

NMFS with the best available information to determine individual accountability for catch, including discards, of IFQ species and compliance with requirements of the Shorebased IFQ Program (§ 660.140) and MS Coop Program (§ 660.150).

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(2) *Submission of logbooks.* Vessel operators must submit copies of the Federal discard logbook and state retained logbook to the vessel owner's contracted EM service provider and to NMFS or its agent within 24 hours of the end of each EM trip.

(3) * * *

(i) *Shorebased IFQ vessels.* EM data from an EM trip must be submitted within 72 hours after the beginning of the offload (and no more than 10 days after the end of the first trip on the hard drive).

(ii) *Mothership catcher vessels.* EM data from an EM trip must be submitted within 72 hours of the catcher vessel's return to port.

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[FR Doc. 2022-03516 Filed: 2/28/2022 8:45 am; Publication Date: 3/1/2022]